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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TANICIA DANIELLE WHITELEY

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SECOND MOTION

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) PLAINTIFF'S BRIEF

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KILOLO KIJAKAZI,
COMMISSIONER OF SOCIAL SECURITY,

Defendant

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Plaintiff by her attorney, moves for a thirty-one (31) day extension of time to file

Plaintiff's Opening Brief. Plaintiff's Opening Brief is currently due to be filed March 11, 2022.

Counsel requests this extension of time due to a culmination of events which have caused such extraordinary circumstances that such extensions are warranted. As noted in the attached Declaration of Howard D. Olinsky, managing partner of Olinsky Law Group, after the initial shutdown related to the COVID-19 pandemic in March 2020, the Commissioner's capacity to produce Administrative Records fell from 300 Administrative Records a week to essentially zero for a large portion of 2020. As of January 2021, the Agency reported over 11,000 pending cases. After months of delay due to the Agency's inability to produce Administrative Records, the Agency expanded their out-of-office capacity to over 700 Administrative Records per week. As

1 of mid-September 2021, the Agency reduced the number of pending cases to just 2,350, a
2 decrease of 8,650 cases in just over nine (9) months. In tandem with the decrease in production
3 of Administrative Records throughout 2020, the Appeals Council withheld claims containing,
4 inter alia, claims of constitutional violations under the Supreme Court's holding in *Seila Law*
5 *LLC v. Consumer Financial Protection Bureau*, 140 S. Ct. 2183 (June 29, 2020). As evidenced
6 in the attached Declaration, Olinsky Law Group went from receiving 65 Appeals Council denials
7 in October 2020 to just 25 Appeals Council denials in November and December of 2020.
8

9 Subsequently in January 2021, the Agency released Emergency Message-21002, which directed
10 staff to flag claims in which the *Seila* issue was raised and to continue processing these claims
11 without discussing or making any finding regarding the *Seila* issue. As evidenced in the attached
12 Declaration, Olinsky Law Group then received 541 Appeals Council denials in January 2021;
13 1,127 Appeals Council denials in February 2021; and 358 Appeals Council denials in March
14 2021. Further, these numbers only represent internal Appeals Council denials received by the
15 Olinsky Law Group, who represents a significant number of additional clients who are referred
16 to this office by non-attorney representatives or unaffiliated attorneys.
17

18 Olinsky Law Group filed 202 briefs in January 2022, and this figure does not include
19 Reply Briefs, Objections to Report and Recommendations, Responses to Motions, 59(e)
20 Responses, Oral Arguments, appeals to the Circuit Courts, EAJA petitions, Fee Litigation,
21 406(b) Petitions, and other miscellaneous tasks which arise throughout the course of litigation.
22 Currently, Olinsky Law Group has 165 briefs drafted or scheduled to be drafted in February
23 2022 and 154 already scheduled to be drafted in March 2022. Counsel asserts that the
24 culmination of these factors has created extraordinary circumstances due to the exigent
25 circumstances created by the COVID-19 pandemic and the Commissioner's response. As a
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1 result, this has caused multiple, simultaneous filing deadlines that cannot be met by Plaintiff's
2 Counsel. Wherefore, Plaintiff requests an extension from March 11, 2022 up to and including
3 April 11, 2022 to file her brief. Counsel for the Plaintiff has conferred with Defendant's Counsel
4 who kindly consents to this request. This is the Plaintiff's second such request in this matter.

5
6 Dated March 3, 2022.

7 Respectfully submitted,

8 IT IS SO ORDERED.

9 Dated: March 3, 2022

10 
11 UNITED STATES MAGISTRATE JUDGE

12
13 /s/ *Hal Taylor*
Hal Taylor, Esq.
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15 **Plaintiff's Certificate of Service:**

16 I certify that I caused the Motion for Extension of Time to be served today, March 3,
17
18 2022, by CMECF to Christopher Bella, Esq. who is a filing user of the CM/ECF system.

19
20 /s/ *Hal Taylor*
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TANICIA DANIELLE WHITELEY,

Plaintiff,

v.

3:21-cv-00191-CLB

KILOLO KIJAKAZI,
ACTING COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Hal Taylor is Of Counsel for the Olinsky Law Group. I, HOWARD D. OLINSKY, declare and state as follows:

1. In mid-March of 2020, due to the COVID-19 pandemic, the Social Security Administration (“SSA”) began to restrict access to buildings, causing a large delay in CAR production for a significant portion of 2020.
2. This created a large backlog of transcripts, and a number of months where a significant portion of our Federal Court caseload was essentially stayed due to the lack of CAR production. OLG, knowing SSA’s lack of capability consented to each extension request made by the Commissioner.
3. SSA, after many months of delay, acquired the capacity to produce over 700 CARs per week. Prior to the COVID-19 pandemic, SSA was producing 300 CARs per week.
4. SSAs new capacity has significantly alleviated the Agency’s backlog of cases. The Agency reported over 11,000 pending cases as of January of 2021

and has reduced that number to 2,350 as of mid-September.

5. The backlog created by the COVID-19 pandemic has pushed a large volume of CARs, and their subsequent briefing deadlines, into a small span of time.
6. At the same time SSA was unable to create CARs for federal court, the AC was issuing an unusually small number of AC denials. The cases which the AC were not releasing contained, *inter alia*, claims of constitutional violations under the Supreme Court's holding in *Seila Law LLC v. Consumer Financial Protection Bureau*, 140 S.Ct. 2183 (June 29, 2020).
7. OLG included challenges under *Seila Law* in briefs to the AC since Early July of 2020. After this inclusion, OLG began to receive an unusually low number of AC denials.

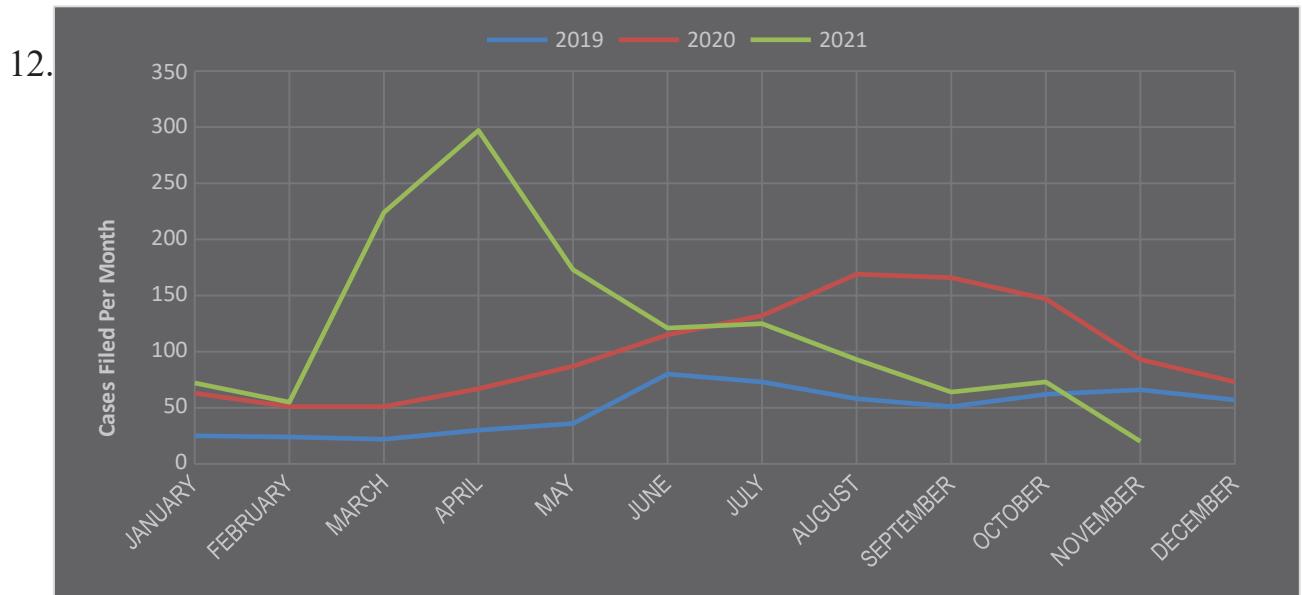
	AC DENIALS RECEIVED
October 2020	65
November 2020	24
December 2020	23

8. Emergency Message-21002, issued on January 15, 2021, states that, “a claimant or representative raises an issue based on *Seila Law* principles . . . staff will flag the case in CPMS or ARPS, respectively, by adding the case characteristic ‘SEIL,’ which appears in both systems under the ‘Other’ case characteristic type.”
9. Emergency Message-21002 directs all staff to “continue processing claims using current policies and business processes without discussing or making any findings related to the *Seila Law* issue.”
10. After the Emergency Message was issued, the AC began to release a significant number of denials which had been held presumably pending guidance from the Agency. The number of AC denials received in late-2020 can be compared to those received in the beginning of 2021.

AC DENIALS RECIEVED	
January 2021	541
February 2021	1127
March 2021	358
April 2021	252
May 2021	172

June 2021	204
July 2021	169
August 2021	168
Sept 20 21	23

11. These numbers represent only *internal* AC denials, although OLG represents a significant number of additional clients who were previously represented by non-attorney representatives or unaffiliated attorneys.



13. OLG drafted and filed 202 briefs in January, 2022. OLG also drafted and filed Reply Briefs, Objections to Report and Recommendations, Responses to Motions, 59 (e) Responses, appeals to the Circuit Courts, EAJA petitions, Fee Litigation, 406b Petitions and other miscellaneous tasks, which are excluded from this calculation.

14. Currently, Olinsky Law Group has 165 briefs drafted or scheduled to be drafted in February 2022 and 154 already scheduled to be drafted in March 2022.
15. In response to the massive release of cases from the AC and the increased CAR production capacity of the Commissioner, OLG has more than doubled its attorney staff.
16. I write this statement to explain why OLGs need to extend out some of our workload. We fully understand that these cases have been on the docket for a while as SSA worked out its CAR production stoppage. In some cases, the Commissioner asked for and received 180 additional days in 60-to-90-day extension increments. Now we need similar consideration to get all the drafting done.

In accordance with 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on: March 2, 2022

/s/Howard D. Olinsky
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